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8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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11 WAYNE KEVIN VERNON,

No. C 06-03338 CRB

12 Plaintiff,

ORDER OF REMAND

13 v.

14 CITY AND COUNTY OF SAN
15 FRANCISCO, et al.

16 Defendants.
17 _____/

18 On April 18, 2006, Plaintiff filed a complaint in state court alleging four intentional
19 tort causes of action relating to his arrest in San Francisco on March 5, 2005. Defendant City
20 and County of San Francisco removed the action on May 19, 2006, based on the Court's
21 original federal question jurisdiction. On June 2, 2006, the Court issued an Order to Show
22 Cause as to the Court's original jurisdiction.

23 On June 9, 2006, defendant responded to the Order to Show Cause with a declaration
24 from counsel explaining that, while plaintiff's original Complaint did not include any federal
25 claims, plaintiff's counsel had represented to her that he would be filing an amended
26 complaint including federal constitutional claims under 42 U.S.C. section 1983 no later than
27 June 16, 2006. Decl. of Monica F. Wiley ¶ 7. While that may indeed be the case, the Court
28 must determine removal jurisdiction at the time the Complaint is filed. See Libhart v. Santa
Monica Diary Co., 592 F.2d 1062, 1065 (9th Cir. 1979). If federal question jurisdiction does

1 not exist, the Court cannot entertain an amendment to the Complaint in order to confer
2 jurisdiction. Id.

3 Here, the Court did not have federal question jurisdiction at the time of removal,
4 thereby rendering a putative amendment irrelevant to a determination fo the Court's federal
5 question jurisdiction. Accordingly, the Court lacks subject matter jurisdiction and this action
6 is hereby REMANDED to state court.

7 **IT IS SO ORDERED.**

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10 Dated: June 12, 2006



CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

United States District Court

For the Northern District of California